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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

Master File No. 07-5944 SC

MDL No. 1917

This Document Relates to:

All Indirect Purchaser Actions;

Best Buy Co., et al. v. Hitachi, Ltd., et al., No. 11-cv-05513;

Best Buy Co., et al. v. Technicolor SA, et al., No. 13-cv-05264;

Sears, Roebuck and Co. and Kmart Corp. v. Technicolor SA, No. 13-cv-05262;

Sears, Roebuck and Co. and Kmart Corp. v. Chunghwa Picture tubes, Ltd., No. 11-cv-05514;

Sharp Electronics Corp. v. Hitachi, Ltd., No. 13-cv-01173;

**DIRECT ACTION PLAINTIFFS'
RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION IN LIMINE
5 [D.E. 3589] TO EXCLUDE PLEA BY
SAMSUNG SDI COMPANY, LTD. AS
TO NON-PLEADING DEFENDANTS
OR, ALTERNATIVELY, TO PROVIDE
A LIMITING INSTRUCTION**

Judge: The Honorable Samuel Conti
Court: Courtroom No. 1, 17th Floor
Date: None Set

DIRECT ACTION PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION IN LIMINE # 5 [D.E. 3589]
TO EXCLUDE PLEA BY SAMSUNG SDI COMPANY, LTD. AS TO NON-PLEADING DEFENDANTS OR,
ALTERNATIVELY, TO PROVIDE A LIMITING INSTRUCTION – C-11-05502 SC
MDL No. 1917

1 *Sharp Electronics Corp. v. Koninklijke*
 2 *Philips Electronics, N.V., et al.*, No. 13-cv-
 02776;

3 *Siegel v. Hitachi, Ltd., et al.*, No. 11-cv-
 4 05502;

5 *Siegel v. Technicolor SA, et al.*, No. 13-cv-
 05261;

6 *Target Corp. v. Chunghwa Picture Tubes,*
 7 *Ltd., et al.*, No. 13-cv-05514;

8 *Target Corp. v. Technicolor SA, et al.*, No.
 13-cv-05686;

9 *Viewsonic Corp. v. Chunghwa Picture Tubes,*
 10 *Ltd.*, No. 14-cv-02510.

11 Defendants are not entitled to exclude the guilty plea by Defendant Samsung SDI
 12 Company, Ltd. ("Samsung SDI") or to their requested instruction limiting the import of that plea.

13
 14 **I. Samsung SDI's Guilty Plea Is Admissible Against All Defendants.**

15 Samsung first argues that "the guilty plea or conviction of a codefendant may not be
 16 offered . . . as substantive evidence of the guilt of those on trial." Defs.' MIL #5 at 1–2 (ellipsis
 17 in original) (quoting *United States v. Halbert*, 640 F.2d 1000, 1004 (9th Cir. 1981), and citing
 18 *United States v. Newman*, 490 F.2d 139, 143 (3d Cir. 1974)). The key word in the quotation is
 19 "guilt," which is what must be established in a *criminal* case. The rule, by its own terms, has no
 20 application to determining *liability* in this *civil* case, and Defendants have not cited any civil cases
 21 applying that rule.

22
 23 Indeed, in the only civil case that Defendants cite in their discussion of this proposition,
 24 the court *admitted* the guilty pleas against persons other than the confessor. See Defs.' MIL #5 at
 25 2 (citing *Scholes v. Lehmann*, 56 F.3d 750, 762 (7th Cir. 1995)). Defendants claim that the
 26 *Scholes* case stands for the proposition that there must be an "agency relationship" between the

confessor and the other person, *id.*, but that case makes no such statement of law. Instead, it provides that the guilty plea *established on summary judgment* the fraudulent-transfer liability of dummy corporations formed to effectuate a Ponzi scheme, and were *admissible* against the schemer's ex-wife, who may or may not have had knowledge of the scheme:

Taken together, the facts just recited, most of which come right out of Douglas's plea agreement, which was admissible though hearsay, and of which the district court properly took judicial notice under Fed. R. Evid. 201, established the defendants' liability (with the partial exception of the ex-wife).

Scholes, 56 F.3d at 762 (internal citations omitted).

The *Scholes* case admitted the guilty plea through application of the hearsay exception in Federal Rule of Evidence 803(22). The text of that rule further confirms that the standard in *Halbert* and *Newman* has no application to a civil case. Rule 803(22) provides that "[e]vidence of a final judgment of conviction" is "not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness," if four elements are satisfied. The fourth element requires that "when [the conviction is] offered by the prosecutor *in a criminal case* for a purpose other than impeachment, the judgment was against the defendant." Fed. R. Evid. 803(22)(D) (emphasis added). The upshot to this rule is that if the judgment of conviction is offered against a defendant in a *non-criminal* case, then *it need not be a plea by the defendant.*¹ As the D.C. Circuit has explained:

Because this case is not a criminal prosecution, the rule does not preclude introduction of the plea documents as evidence of the

¹ A second upshot, unnecessary in the civil context, is that the judgment of conviction is still admissible in a trial against a person other than the confessor for purposes of impeachment. That exception was recognized in *Halbert*, which discussed at length the admissibility of a codefendant's guilty plea when the codefendant is testifying against a defendant. See 640 F.2d at 1005 ("It is manifestly apparent that evidence of the plea is relevant to credibility regardless whether government or defendant initiates inquiry about it.").

judgment “against persons other than the accused” (i.e., the other defendants) for reasons other than impeachment. That is, because this is a civil case, BIE’s guilty plea may be admitted under Rule 803(22) against all the defendants as long as the plea was admitted “to prove any fact essential to sustain the judgment.”

United States ex rel. Miller v. Bill Harbert Int’l Constr., Inc., 608 F.3d 871, 892 (D.C. Cir. 2010); accord *Strauss v. Crédit Lyonnaise, S.A.*, 925 F. Supp. 2d 414, 447 (E.D.N.Y. 2013) (“Rule 803(22)(d) specifically prevents using a previous conviction in a criminal case for purposes other than impeachment, unless the judgment was against the defendant. This carve out would be unnecessary if judgments always were inadmissible against a non-party.” (internal citation omitted)). Here, Samsung SDI’s guilty plea and conviction are admissible against all Defendants.²

The defendants in *In re: TFT-LCD (Flat Panel) Antitrust Litigation* also moved in limine to exclude “all evidence of or comment about guilty pleas,” and Judge Illston denied those motions. See Ex. 1, Final Pretrial Scheduling Order – Phase 1 DAP Trial, *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 3:07-md-01827-SI (N.D. Cal. July 11, 2013) (D.E. 8298) (“No. 1: To exclude all evidence of or comment about guilty pleas: DENIED, without prejudice to specific objections to specific questions at trial.”)³; Ex. 2, Final Pretrial Scheduling Order, *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 3:07-md-01827-SI (N.D. Cal. May 4, 2012) (D.E. 5597) (No. 7: To exclude evidence of guilty pleas by Japanese manufacturers: DENIED, without prejudice to specific objection at trial.”); see also Ex. 3, Order re Best Buy’s Trial Brief re (1) FRE 1006 Summary Witness and (2) Dr. McClave, *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 3:07-

² As discussed in Section II below, the plea is not only admissible against all Defendants, but against Samsung SDI, it is conclusive.

³ Exhibits are attached to the accompanying Affidavit of Brian M. Gillett.

md-01827-SI (N.D. Cal. Aug. 8, 2013) (D.E. 8428) (“The Court concludes that the documents [summarizing guilty pleas and judgments] are admissible pursuant to FRE 803(22) . . .”).

II. Samsung SDI’s Guilty Plea Is Conclusive as to Samsung SDI.

Defendants next argue that the guilty plea may be admitted against Samsung SDI only to establish the “narrower set of facts” listed in Samsung SDI’s guilty plea and therefore “necessarily decided” in the criminal action. Defendants are confusing two distinct issues—the question of what admitted evidence means, and the separate question of whether that evidence is admissible in the first instance.

As to what the evidence means, Defendants mistakenly cite an asset forfeiture case for the proposition that Samsung SDI’s “guilty plea can be used only to establish facts ‘necessarily decided’ in the criminal action.” Defs.’ MIL #5 at 2 (quoting *United States v. Real Prop. Located at Section 18*, 976 F.2d 515, 519 (9th Cir. 1992)). But that is not an accurate quotation from the case. What the case actually says is that “a guilty plea may be used to establish issue preclusion in a subsequent civil suit” such that “matters necessarily decided in the prior [criminal] action are *barred from relitigation by collateral estoppel*.” *Real Prop. Located at Section 18*, 976 F.2d at 519 (emphasis added). The case thus places restrictions on what a defendant may say about its guilty plea (and facts necessarily decided in that guilty plea), and not a restriction on what the Plaintiffs may say about Samsung SDI’s guilty plea here.

The other case that Defendants cite, *In re Homestore.com, Inc. Securities Litigation*, is no different. In that case, the defendant had previously pleaded guilty to securities fraud, and the plaintiff sought to collaterally estop the defendant from denying civil liability. 2011 WL 291176, at *3 (C.D. Cal. Jan. 25, 2011). The court held that the defendant’s guilty plea to a violation of

1 Section 10(b) did not conclusively establish liability for civil violation of Rule 10b-5 because “the
2 plea agreement and conviction did not address all the required elements in Plaintiff’s 10b-5 claim,
3 such as reliance or economic loss.” *Id.* As to the “cautionary jury instruction” that Defendants
4 quote, that was related to a *different* motion in limine in that case, one by the defendant requesting
5 that the guilty plea be excluded as confusing and prejudicial. *Id.* at *9. The court rejected that
6 argument, noting that “the risk of prejudice here is not substantial,” that the defendant would have
7 the opportunity at trial to argue that the guilty plea did not establish all elements of the civil
8 claim, and that “cautionary jury instructions *can* be used to counter these concerns.” *Id.*
9 (emphasis added).” But, notably the court did *not* hold that the defendant was entitled to such an
10 instruction.
11

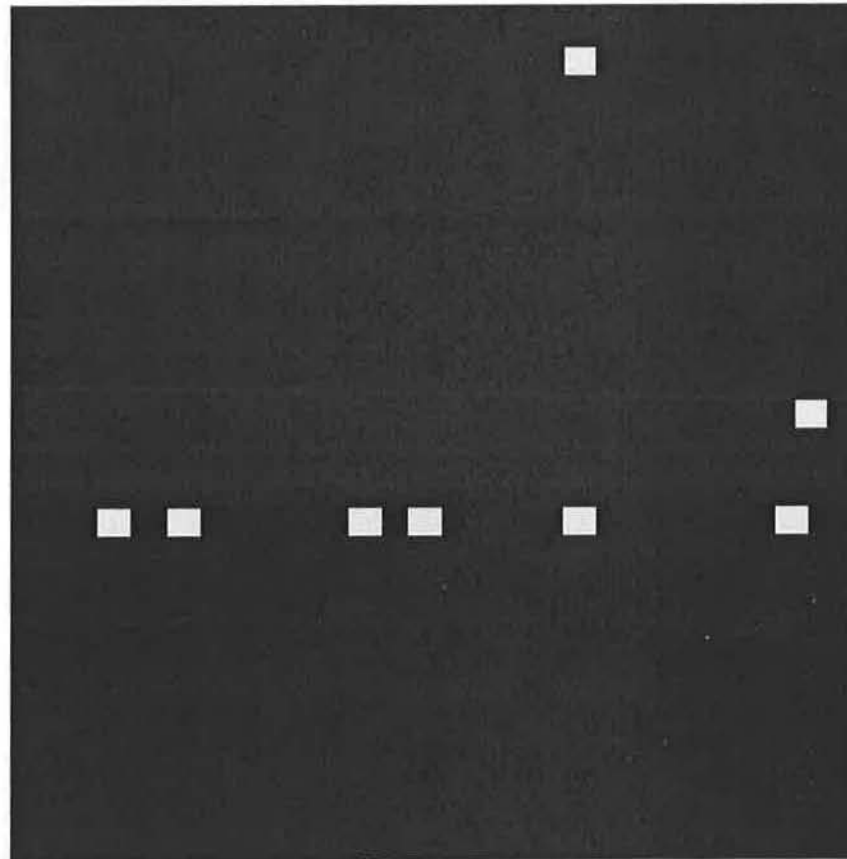
12
13 As to the question of whether the evidence is admissible in the first instance, the answer is
14 addressed by the text of Federal Rule of Evidence 803(22)(C). That subsection provides that
15 evidence of a final judgment of conviction is not barred by hearsay, regardless of the declarant’s
16 availability, if “the evidence is admitted to prove any fact essential to the judgment.” Fed. R.
17 Evid. 803(22)(C). Those facts are recited in the guilty plea’s Factual Basis for Offense Charged,
18 and DAPs are entitled to submit those facts to the jury, whether or not Samsung SDI is available
19 to testify at trial.
20

21 **III. Defendants Are Not Entitled to Their Requested Limiting Instruction.**

22 Nor are Defendants entitled to their requested limiting instruction. A limiting instruction
23 is proper only when evidence “is admissible against a party or for a purpose—but not against
24 another party or for another purpose.” Fed. R. Evid. 105. As explained above, Samsung SDI’s
25 guilty plea is admissible against all Defendants pursuant to Rule 803(22), and that rule sets out
26

1 the only four limitations on Plaintiffs' use of Samsung SDI's guilty plea. The first two
 2 limitations—requiring that “judgment was entered after a trial or guilty plea” and “the conviction
 3 was for a crime punishable by death or by imprisonment for more than a year”—are not disputed.
 4 Fed. R. Evid. 803(22)(A), (B). The fourth limitation precludes a *prosecutor* from offering a third
 5 party's guilty plea for purposes other than impeachment, and by its terms does not apply in this
 6 non-criminal action. Fed. R. Evid. 803(22)(D).

8 That leaves only the third limitation—that “the evidence is offered to prove any fact
 9 essential to the judgment.” Fed. R. Evid. 803(22)(C). Plaintiffs agree that this provides a
 10 limitation on the purpose for which Samsung SDI's guilty plea may be used. To that extent, if the
 11 Court deems a limiting instruction in order, then DAPs do not oppose one as follows:



1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 This proposed instruction, unlike Defendants' proposed instruction, specifies what facts
 16 Samsung SDI's guilty plea are evidence of, and admonishes what they are not evidence of,
 17 consistent with Rule 803(22)(C). By contrast, Defendant's proposed instruction is overbroad, in
 18 that it would prevent this evidence from being considered with respect to the other Defendants.
 19 Moreover, Samsung SDI's guilty plea is *not* "[e]vidence of [the other Defendants'] character or
 20 character trait," Fed. R. Evid. 404(a)(1), so there is no basis for an instruction that would cover
 21 that wholly inapplicable rule of evidence.⁴ Moreover, the guilty plea is not being offered as
 22 evidence that Samsung SDI "acted in accordance with the [bad] character or trait" and committed
 23 some other wrongful act; it is being offered as evidence that Samsung SDI committed the very

24
 25
 26 ⁴ Plaintiffs also submit that Defendants have waived any argument relating to character
 evidence by failing to brief it.

wrongful acts confessed in the guilty plea. Fed. R. Evid. 404(a)(1). Also, Defendants are not entitled to an instruction that no other Defendant was charged, convicted, or pled guilty in a CDT conspiracy. Samsung SDI's guilty plea does not assert to the contrary, and the jury is already being instructed that Samsung SDI's guilty plea is evidence only of the facts it recites. Having the Court emphasize what is already apparent from Samsung SDI's guilty plea is not required by the rules of evidence, and it would only unfairly prejudice the DAPs.⁵

IV. Conclusion.

Defendants are not entitled to exclude Samsung SDI's guilty plea at trial, and they are not entitled to their overbroad requested limiting instruction. The Court should deny Defendants motion and, if the Court deems a limiting instruction appropriate, use the one suggested above.

Dated: February 27, 2015.

⁵ This is also particularly true where Defendants are simultaneously seeking to bar Plaintiffs from raising the fact or circumstances of any investigation by the Department of Justice. See Defendants' Motion in Limine #3: To exclude All Evidence and Reference at Trial to the U.S. Department of Justice's Criminal Investigations of the Cathode Ray Tube Industry (D.E. 3556). Defendants would ask the Court to say what Defendants want to say about the results of the DOJ investigation, but prohibit the Plaintiffs from making any contrary statement.

Moreover, such a statement would be misleading in light of the fact that individual executives, including some employed by Defendant Chunghwa Picture Tubes Ltd., were, in fact, indicted. See <http://www.justice.gov/opa/pr/former-executive-indicted-his-role-two-cathode-ray-tube-price-fixing-conspiracies>; <http://www.justice.gov/opa/pr/former-taiwanese-executive-indicted-color-display-tube-price-fixing-conspiracy>; <http://www.justice.gov/opa/pr/three-former-executives-indicted-color-display-tube-price-fixing-conspiracy>.

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